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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Peter W. Schmidt Director P. O. Box 10009 Richmond, Virginia 23240-0009 (804) 762-4000

MEMORANDUM

TO: Speaker Pollard, HW Enforcement Specialist, OE

THROUGH: Glenn Moore, Hazardous Waste Compliance Manager, OWRM

Mohammand Habibi, Compliance Consultant, OWRM MRH

FROM: Robert Lincoln, Analytical Chemist, OWRM #

COPY: Hassan Vakili, Director, Waste Operations

John Ely, Director, OE, Waste Division

Clair Slaughter, OWRM

DATE: February 9, 1995

Subject: Recommendation to Terminate Buckingham Correctional

Facility, VAD982696023, Enforcement Action

In response to your Memorandum dated November 30, 1994, and subsequent telephone conversations, I concur that the enforcement action pending against Buckingham Correctional Facility should be terminated. My knowledge of the facts of this case is consistent with your finding that the process in the final rinse, during the period in question, was conversion coating and neither electroplating nor metal etching. Therefore, sludges derived from this process would not fall under the F006 listing criteria.

Please let me know if I can be of any further assistance in the resolution of this case.





COMMONWEALTH of VIRGINIA

DEPARTMENT OF WASTE MANAGEMENT 11th Floor, Monroe Building 101 N. 14th Street Richmond, VA 23219 (804) 225-2667 TDD (804) 371-8737

JUN 2 6 1991

Mr. John J. Humphries, III, Chief General States Permits Section (3HW52) U. S. Environmental Protection Agency 841 Chestnut Building Philadelphia, Pennsylvania 19107

Re: Effect of <u>U.S. Nameplate</u> and <u>Brown Wood Preserving</u> on Buckingham Correctional Center, Virginia Department of Corrections (EPA ID No. VAD982696023)

Dear Mr. Humphries:

For almost a year now, the Department of Waste Management has been attempting negotiate a proposed Compliance Agreement with Buckingham Correctional Center, a facility operated by the Virginia Department of Corrections. The major remaining issue involves F006 waste.

Buckingham now contends that the process it previously operated did not generate F006 waste because its waste did not fall within the scope of the listing consistent with the guidelines of the <u>U.S. Nameplate</u> and <u>Brown Wood Preserving</u> decisions. If this matter cannot be resolved, it may be necessary for the Department to ask Region III to assume enforcement responsibility for this case. For this reason in particular, I would appreciate your guidance on this issue.

Enclosed for your review is (1) Buckingham's May 30, 1991, letter raising the listing objection; (2) a schematic of the surface preparation process that the Department alleges is within the scope of the F006 listing; (3) a copy of the proposed Compliance Agreement (which describes this process in Paragraph 3 of Section B); and a memorandum on this issue prepared by one of the Department's legal assistants on the enforcement staff.

I would appreciate your guidance in responding to Buckingham's position as outlined in their May 30 letter.

Mr. John J. Humphries, III Page 2

Thank you very much for your assistance. If you have any questions, please contact me at (804) 225-4761.

Sincerely,

C. Ronald Smith

Hazardous Waste Enforcement Chief

Enclosures

MEMORANDUM

TO: C. Ronald Smith

Hazardous Waste Enforcement Chief

Division of Regulation

FROM: Speaker Pollard

Legal Assistant

DATE: June 25, 1991

RE: Virginia Correctional Enterprises/

Buckingham Correctional Facility

EPA ID NO. VAD982696023

Effect of Holdings of <u>U.S. Nameplate</u> and Brown Wood Preserving on F006 Listing

Introduction

In a recent letter to the Department, Virginia Correctional Enterprises/Buckingham Correctional Center ("Buckingham") states it would not sign the most recent draft Letter of Agreement addressing alleged violations of the VHWMR at Buckingham. Buckingham's refusal rested in part upon the holdings of two recent EPA judicial cases, In re U.S. Nameplate Company, Docket No. RCRA-84-H-0012 (1986), and In re Brown Wood Preserving Company, Docket No. RCRA-84-16-R (1989). This memorandum discusses the applicability of these two cases to and their effects on the Buckingham enforcement action.

Buckingham's Position

In the above-referenced letter, Buckingham states that the Department is relying on a background document created by EPA. This document describes in detail the intended scope of the F006 listing promulgated by EPA in 1980 and later adopted by the Department. Buckingham then argues that the <u>U.S. Nameplate</u> and <u>Brown Wood Preserving</u> cases hold that a background document used

to justify the listing definition of a hazardous waste is insufficient to give a user the guidance it needs to easily and certainly determine whether its waste is subject to the conditions of the regulations. Buckingham then applies this holding to its own situation and concludes that, because the F006 background document is not enough to give Buckingham effective knowledge under the rule, Buckingham's process is not covered under the F006 listing.

Analysis of the Cases

<u>In re U.S. Nameplate</u> concerned a F006 listing challenge similar to the one involved in Buckingham's case. In <u>U.S. Nameplate</u>, the Judicial Officer concluded that

EPA intended each industry classification on the list to be sufficiently informative and specific so that individual waste generators could determine whether their wastes are included on the list.

Brown Wood Preserving, slip op. at 6. "Legal authority for listing wastes generically rather than individually was explained" in the Federal Register that announced the listings. Id. at 7. The announcement stated that a listing description should be "sufficiently specific and particularized for individual generators to determine whether their waste streams are included within the definition." Id., guoting 45 FR 33114, May 19, 1980.

The listing description is not the only source of definitional guidance, however. Any "substantive rules of general applicability . . . and statements of general policy or interpretations of general applicability" are subject to the publication and reference requirements of the Freedom of Information Act, 5 U.S.C. § 552(a)(1)(D) ("FOIA"). <u>Id.</u> at 8. Thus, a background document that contains such rules, statements, or interpretations would be subject to the publication and reference requirements of § 552(a)(1)(D). Id. The Judicial Officer held that the background document for the F006 listing fit this description and was therefore subject to the publication and reference requirements. The background document had not been published, and was only given a cursory, vague reference in the text of the listing preamble. In deciding whether the reference given was adequate under the statute, the Judicial Officer, relying on language from Appalachian Power Co. v. Train, 566 F.2d 451 (4th Cir. 1977), held that the language of incorporation must be precise, complete, and useful. Id. at 12. Reference to background documents must be sufficient "to give [the user] 'effective enough knowledge so that [it might] easily and certainly ascertain the conditions by which [it was] to be

bound.'" <u>Id.</u> at 13, <u>quoting Appalachian Power</u>, at __. Concluding that the reference for the F006 listing background document did not meet the publication or the reference requirements, he held that U.S. Nameplate should not have been expected to know its waste was intended by EPA to be a hazardous waste under the listing description as it existed in its published form, and the waste was therefore exempted.

<u>In re Brown Wood Preserving</u> continued the procedural standards set forth in <u>U.S. Nameplate</u>. Written by the same Judicial Officer, this later case offered some helpful policy considerations. First, there is need for a

recognition that presuming familiarity with thousands of pages of unpublished background documents is going too far. . . . As a matter of simple fairness, . . . it seems highly suspect to provide specific listings like the one at issue, only to bring an enforcement action based on an expanded reading of the listing gleaned from an unpublished background document.

Brown Wood Preserving, slip op. at 7. The second consideration concerns the potential for conflict between relying on a background document and the listing itself.

The references indicated that the background documents provided detailed justification for the listings, but they in no way modified the Agency's contemporaneous assertion that the listings themselves are sufficiently specific to determine their scope.

Id. at 6, note 29. Although <u>Brown Wood Preserving</u> dealt with the K001 waste listing, the "descriptions were issued together, so precisely the same vague and incidental references to the background documents examined in <u>U.S. Nameplate</u> are at issue here." <u>Id.</u> The use of definitions in background documents which are only incidentally referenced in the rule preamble to alter the clear meaning of that rule's waste listing raises serious concerns. <u>Id.</u> at 5-6.

<u>Current Listing Status</u>

Shortly after the <u>U.S. Nameplate</u> decision, EPA issued an "interpretive rule" concerning its F006 listing. 51 FR 43350-51, December 2, 1986. This clarification of the listing dealt specifically with the findings of the case, in that it ultimately expressly excluded the process used by U.S. Nameplate from the listing. <u>51 FR 43350-51</u>. In addition, the EPA attempted to address the faulty reference to the background document by citing it specifically, but only once, in the context of its use in

explaining the scope of the original listing. <u>51 FR 43350</u>. Lastly, EPA expressly described the extent of the listing's exclusiveness and inclusiveness. <u>51 FR 43351</u>. EPA has therefore published a revised listing that excludes certain processes not specifically cited in the listing but included in the background document (chemical conversion coating, electroless plating, and some printed circuit board manufacturing). <u>51 FR 43350-51</u>. The clarification also expressly includes other processes contained in the background document but not originally listed (most common and precious metal electroplating on carbon steel and most anodizing). <u>51 FR 43350-51</u>. The remaining processes expressly included in the clarified listing are those originally expressly included.

Application to Buckingham

By publishing the interpretive rule, EPA satisfied the publishing requirements of FOIA with respect to the processes included in the clarified listing, and it gave effective notice to the regulated community of the listing changes. However, the background document may contain controlling interpretations of the processes included in the clarified listing. Very little of the background document was explained with respect to interpretation of what is intended to be included in the processes in the clarified listing. Unless the process Buckingham uses is clearly within the clarified listing, in a sense published, then the background document would have to be used for guidance. EPA referred to the background document as a complete work only once, and not in the context of the scope of the processes enumerated under the clarified listing.

Remembering that the reference must be precise, complete, and useful under <u>U.S. Nameplate</u>, the reference in this interpretive rule to supporting guidance fails to exhibit all three characteristics. It is not precise, because it lacks sufficient direction so as to guide the user to the particular part of the document where the explanations exist. It is not complete reference for much of the same reasoning. The reference is not useful, because it does not address the clarified listing, only the original listing, and it does not consider the conflict of interpretation caused by the need for guidance beyond the clear meaning of the clarified listing.

Conclusion

If the Division of Technical Services finds that the process used by Buckingham fits within the clear meaning of the clarified listing, and the Division does not require the use of the background document to support its determination, then the clarified listing squashes Buckingham's assertion that the

Department's enforcement action is based on the background document and therefore unwarranted. If, however, the Department's enforcement action is based upon a reading of the background document, then the enforcement action suffers much of the same problems the <u>U.S. Nameplate</u> and <u>Brown Wood Preserving</u> cases did, and it may share in their fate.





COMMONWEALTH of VIRGI

EDWARD W MURRAY DIRECTOR

Department of Corrections

P O BOX 26963 VIRGINIA 23261 (804) 674-3000

May 30, 1991

Mr. Ronald Smith
Hazardous Waste Enforcement Chief
Department of Waste Management
101 North 14th Street
Richmond, VA 23219

Re: Compliance Agreement for Buckingham Correctional Center/ Correctional Enterprises EPA ID No. VAD 982696023

Dear Mr. Smith:

Pursuant to several meetings that have taken place between the Department of Waste Management and Virginia Correctional Enterprises, a complete review of the proposed Compliance Agreement regarding the Buckingham Correctional Center/Correctional Enterprises was undertaken by the Department of Corrections and its Counsel, William R. Coleman, Assistant Attorney General.

While I did not attend the meetings, I understand that the discussions concerned the Buckingham Metal Shop located at Buckingham Correctional Center. It is my further understanding that Virginia Correctional Enterprises and Buckingham Correctional Center were originally cited by the Department of Waste Management as a generator of FOI¶ (conversion coating of aluminum) and FOO6 (electroplating of steel) hazardous waste substances.

Based on the presentation by Hatcher Sayre to the Department of Waste Management during this initial meeting, it was agreed that Virginia Correctional Enterprises was not a generator of F01¶ and did not have the process to do such. Correctional Enterprises, Buckingham Correctional Center and the Department of Waste Management then proceeded to discuss the F006 violation.

The EPA regulations that are published state that F006 is hazardous waste sludge from the electroplating process, except from the following process: sulfuric acid anodizing of aluminum; tin plating of carbon steel; zinc plating (segregated bases) of carbon steel, aluminum or zinc aluminum plating on carbon steel; and chemical etching and milling of aluminum. The metal shop does not have the equipment nor the processes listed in F006 and this was supported by the presentation of Hatcher Sayre.

Page 2 May 30, 1991

Virginia Correctional Enterprises has a wash system used for cleaning cold rolled carbon steel prior to painting. This process is a phosphoric acid spray that cleans the metal of oil and grease. The Department of Waste Management cited Virginia Correctional Enterprises and Buckingham Correctional Center as a F006 generator based upon a background document developed by EPA. The process Virginia Correctional Enterprises uses is not referenced in the background document, but an immersion process similar to the one used by Virginia Correctional Enterprises is referenced in the background document. Based upon the reading of the printed EPA regulations, the shop is not a F006 generator.

I am enclosing copies of the final decisions in <u>U.S. Nameplate</u> and <u>Brown Wood Preserving Company</u> which are cases before the Administrator of the <u>U.S. Environmental Protection Agency.</u> Both cases stand for the proposition that reference documents are insufficient to give a user "effective enough knowledge so that (it might) easily and certainly ascertain the conditions by which (it was) to be bound." <u>U.S. Nameplate</u> (pg. 13). It should be noted that <u>U.S. Nameplate</u> was also an F006 situation not unlike the metal shop at Buckingham.

For the above-stated reasons, we will not sign a consent agreement agreeing to a closure plan of the beds at Buckingham. It is our position that Virginia Correctional Enterprises is not a F006 generator at that metal shop and that there is nothing in the regulations that refers to the processes that we use as generating a F006 hazardous waste.

The Department of Corrections and Virginia Correctional Enterprises are committed to obeying the state and federal environmental regulations. The Department cannot, however, agree to sign an agreement that requires that the Department complete numerous procedures that are not required by law or regulation. I am sure that you can appreciate that during these tight fiscal times, a sizeable expenditure of funds for closure of these beds when not required by law or regulation would not be in the best interest of the Commonwealth.

I can assure you that we have provided training to personnel and taken steps to assure that all reporting requirements will be met in the future.

Page 3 May 30, 1991

Should you require additional information regarding this matter, please contact me at 674-3000. Thank you for your cooperation.

Very truly yours,

John W. McCluskey

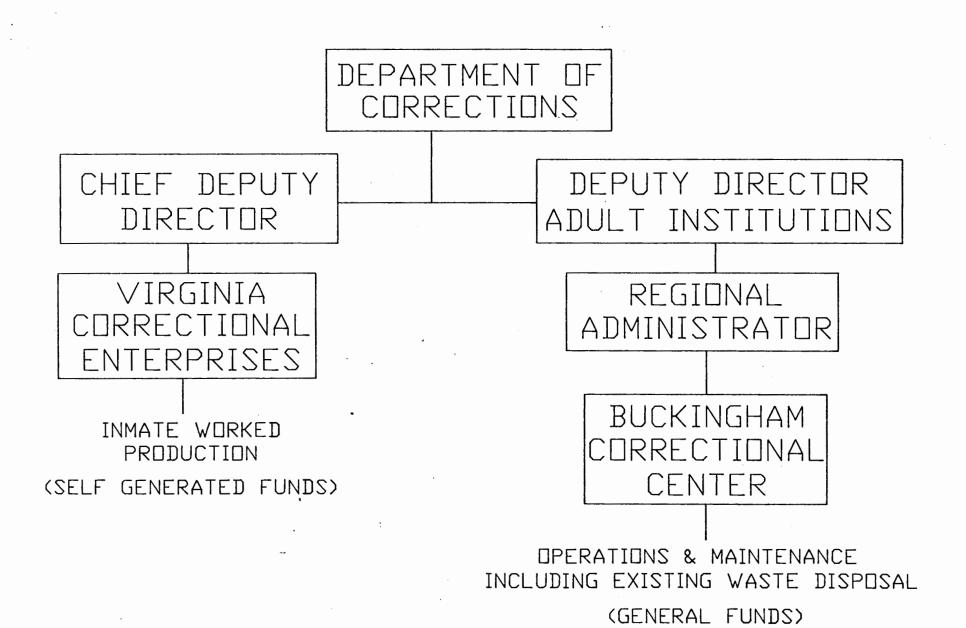
Chief Deputy Director

JWMcC/jc

cc: Mr. E. W. Murray

Mr. H. A. Parr

Mr. W. R. Coleman

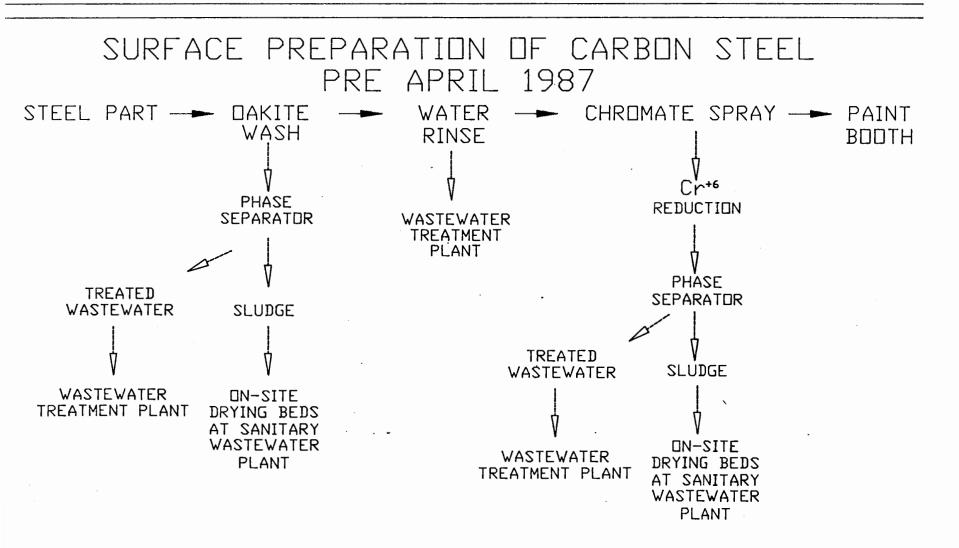


BUCKINGHAM CORRECTIONAL CENTER METAL FURNITURE SHOP

NO PAINT OPERATION

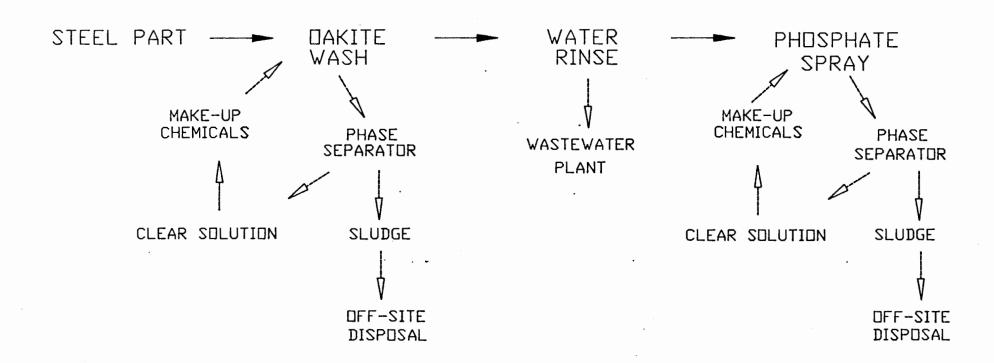
PAINT OPERATIONS

BUCKINGHAM CORRECTIONAL CENTER METAL FURNITURE SHOP



BUCKINGHAM CORRECTIONAL CENTER METAL FURNITURE SHOP

SURFACE PREPARATION OF CARBON STEEL POST APRIL 1987





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COMMONWEALTH of VIRGINIA

DEPARTMENT OF WASTE MANAGEMENT

11th Floor, Monroe Building 101 N. 14th Street Richmond, VA 23219 (804) 225-2667 TDD (804) 371-8737

MAR 8 1991

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Herbert A. Parr Administrator Division of Institutional Services Correctional Enterprises Department of Corrections P. O. Box 27423 Richmond, Virginia 23261-7423

Re: Compliance Agreement for

Buckingham Correctional Center/Correctional Enterprises

EPA ID No. VAD982696023

Dear Mr. Parr:

Enclosed for your review is a revised Compliance Agreement in the above-referenced matter. The Agreement has been revised to:

- (1) reflect the results of the January 18, 1991, meeting;
- (2) include minor editorial changes; and
- (3) incorporate new format changes for such agreements.

Based on our discussion during the last meeting, I am confident that VDOC will find the enclosed proposed Agreement acceptable with perhaps only very minor changes.

Please respond no later than Tuesday, April 2, 1991, indicating the course of action VDOC wishes to take in this matter.

Mr. Herbert A. Parr Page 2

If you have any questions, please contact me at (804) 225-4761.

Sincerely,

C. Ronald Smith

Hazardous Waste Enforcement Chief

Division of Regulation

Enclosures

cc: Deborah Love Feild, Esquire

William F. Gilley Mohammad Habibi

CRS:112.w5/na

COMPLIANCE AGREEMENT

VIRGINIA WASTE MANAGEMENT BOARD

and

VIRGINIA DEPARTMENT OF CORRECTIONS

Re: Buckingham Correctional Center/

Virginia Correctional Enterprises

EPA ID No. VAD982696023

SECTION A: PREAMBLE AND AUTHORITY

This is a Compliance Agreement between the Virginia Waste Management Board ("the Board") and the Virginia Department of Corrections ("DOC") regarding the DOC Buckingham Correctional Center ("BCC"). This Compliance Agreement is entered into by the Board, through the Director ("Director") of the Department of Waste Management ("the Department"), pursuant to the authority granted to the Board and the Director under §§ 10.1-1402, -1404, -1405, and -1455 of the 1950 Code of Virginia, as amended ("Va. Code").

Pursuant to 42 U.S.C. § 6926, the U.S. Environmental Protection Agency ("EPA") has granted the Commonwealth of Virginia interim and final authorization to administer and enforce its hazardous waste program (Phase I and Phase II Components A and B) in lieu of the federal hazardous waste program, as published in the Federal Register on November 3, 1981, August 17, 1983, and December 4, 1984.

SECTION B: FINDINGS

- 1. The Commonwealth of Virginia, DOC, Division of Administration/Correctional Enterprises ("VCE"), operates a sheet metal shop at BCC in Dillwyn, Virginia, for which a "Notification of Hazardous Waste Activity" was filed with EPA on August 10, 1989, declaring the facility to be a generator of hazardous waste listed or identified under Title 40, Code of Federal Regulations, Part 261.
- 2. The sheet metal shop at BCC, which produces metal furniture, has been operated by VCE since December of 1982.
- 3. In support of the production of metal furniture at BCC, the VCE sheet metal shop used, and continues to use, a three-stage automatic metal wash and treatment system. As late as April 30, 1987, the three-stage metal wash consisted of an initial stage,

wherein the metal articles were immersed in a cleaning solution containing Oakite 747 Detergent, a secondary clear water rinse, and the final stage, containing a light chromate rinse, which was employed to enhance paint adhesion to the metal furniture. three-stage metal wash was applied to carbon steel. From the time that the sheet metal facility opened at BCC until April 1987, contents of the first tank, containing the Oakite detergent wash, and contents of the third tank, containing the light chromate rinse (which was first neutralized in order to convert the chromate hexavalents found therein into trivalents, which were then precipitated from the solution), were discharged twice a year through the floor drains which led to the on-site wastewater treatment facility. The sludges that were generated by the wastewater treatment facility are listed hazardous wastes, specifically F006. This sludge was placed on two drying beds located adjacent to the wastewater treatment facility, which caused those drying beds to become subject to regulation as hazardous waste surface impoundments under the Virginia Hazardous Waste Management Regulations ("VHWMR"). On at least two occasions during the 1982-87 period, sludge was removed from the drying beds and sent for disposal to the H.W. Bryant, Sr., Landfill (Permit No. 169, revoked), a solid waste disposal facility not authorized to receive hazardous waste.

4. After April 1987, VCE switched from the light chromate rinse, previously found in the third rinse tank, to a nonchromate

rinse. In addition to changing the solution of the third rinse tank from a chromate-based one to a nonchromate-based rinse, VCE also stopped discharging the waste fluids from tanks one and three down the floor drains. Since May of 1987, VCE has emptied the waste fluids from its three-stage metal rinse into barrels in the shop. Once the waste solutions are in the barrels, they are allowed to settle and separate, at which point the chemicals and the water are removed from the barrels and returned to the appropriate rinse tanks.

- 5. In late 1987, or early 1988, sludge from the two drying beds was removed and placed into thirty (30) unmarked drums, which were then placed near the drying beds, and left there.
- 6. BCC was inspected by Department personnel on June 6, 1989, and violations of the VHWMR were discovered. The violations that were discovered at BCC are:
 - a. BCC/VCE, as a hazardous waste generator, had not filed a Notification of Hazardous Waste Activity, and had not obtained a permanent EPA Identification number, in violation of Part IV of the VHWMR.
 - b. VCE had employed a transporter, Terra First, which did not possess a valid Virginia Transporter Permit to transport hazardous waste, in violation of VHWMR §

5.5.A.7.

- c. VCE had improperly classified waste xylene as D001 waste instead of F003 waste on hazardous waste manifests, in violation of VHWMR § 5.3.B.6.
- d. VCE had failed, in several instances, to document on the accompanying manifests the correct quantities of hazardous waste that were being transported, in violation of VHWMR § 5.3.B.7.
- e. A copy of hazardous waste manifest #01071, dated 9/21/88, had not been received from the designated facility to which BCC sent the hazardous waste, and BCC, in violation of VHWMR § 6.5.C, had not filed an exception report.
- f. BCC and VCE personnel had not successfully completed a program of classroom training or one-the-job training in hazardous waste management, nor had new employees successfully completed training within six (6) months of their employment or assignment to the facility, in violation of VHWMR §§ 6.4.E.1.d, 9.1.G.1, and 9.1.G.2.
- g. BCC and VCE did not have on record job titles for personnel that are involved with hazardous waste

management, the name of the employee filling each job, a written job description for each position listed, a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position, or records that document that the training or job experience has been given to, and completed by, facility personnel; and no annual review of any initial training had been conducted, in violation of VHWMR §§ 6.4.E.1.d, 9.1.G.3, and 9.1.G.4.

- h. BCC and VCE failed to maintain records relating to the training of hazardous waste management personnel, in violation of VHWMR §§ 6.4.E.1.d and 9.1.G.4.
- i. BCC and VCE did not have an established contingency plan for dealing with any unplanned sudden, or non-sudden release of hazardous waste, or hazardous waste constituents, into the environment, in violation of VHWMR §§ 6.4.E.1.d and 9.3.
- j. BCC/VCE, as a generator of hazardous waste, had not maintained, for a period of at least three years, copies of all hazardous waste manifests, annual reports, and test results, in violation of VHWMR § 6.5.A.

- k. BCC had not submitted an annual report to the Director of the Department of Waste Management for any calendar year, in violation of VHWMR § 6.5.B.
- 1. BCC failed to maintain hazardous waste containers in good condition, to transfer the waste to a container that is in good condition, or to otherwise properly manage such waste, in violation of VHWMR § 9.8.B.
- m. BCC allowed several drums, containing hazardous waste, to remain open to the environment, in violation of VHWMR § 9.8.D.1.
- n. BCC stored hazardous waste (F006) in two surface impoundments (sludge drying beds) without having been granted interim status or a hazardous waste management permit for such activity, in violation of VHWMR Parts IX, X, and XI.
- o. BCC and VCE released hazardous waste (F006) to a facility (the H. W. Bryant, Sr., Landfill) that did not have an EPA Identification Number and did not have interim status or a permit for treatment, storage, or disposal of hazardous waste, in violation of VHWMR § 6.2.C and Part V.

DRAFT

- p. The accumulation date was not clearly marked and visible for inspection on each container, and the containers were not clearly marked with the words "Hazardous Waste", in violation of VHWMR §§ 6.4.E.1.b and 6.4.E.1.c,.
- q. BCC failed to notify the Director of the Department of Waste Management of the exact location of hazardous waste accumulation areas, in violation of VHWMR §§ 6.4.E.l.e.
- r. BCC stored thirty (30) drums of hazardous waste for a period greater than the ninety (90) days allowed generators, without interim status or a hazardous waste management permit for such activity, in violation of VHWMR § 6.4.E.1 and Parts IX, X, and XI.
- 7. On August 8, 1989, personnel from the Department of Waste Management and BCC and VCE met in Richmond. At the August 8th meeting, BCC and VCE presented a draft contingency plan for the Department's review. Additionally, since the June 6, 1989, inspection, BCC and VCE have made efforts to secure training for those personnel involved in hazardous waste management, have obtained an EPA Identification Number, have filed a Notification of Hazardous Waste Activity with the EPA, and, in accordance with

VHWMR § 4.1.B, have provided the Director of the Department with a copy of that Notification.

SECTION C: AGREEMENT

As a result of informal conferences on August 24, 1990, and January 18, 1991, between agents of the parties, the parties enter into this Compliance Agreement ("Agreement") after due consideration. It is the intent of the Board that the laws and regulations of the Commonwealth be most expeditiously served and that the environment and public health be protected by entering into this Agreement. It is the intent of DOC to demonstrate its desire to fully comply with the laws and regulations of the Commonwealth.

Therefore, in order to ensure that DOC takes appropriate and timely action to meet its obligations, DOC agrees to comply with the Schedule of Compliance in Appendix A of this Agreement, which is incorporated herein by reference.

SECTION D: ADMINISTRATIVE PROVISIONS

1. For the purpose of this Agreement, DOC does not contest the jurisdictional and factual allegations contained herein.

DBAFT

- 2. For the purpose of this Agreement, DOC waives the right to request further hearing on any issue of fact or law herein and consents to the terms of this Agreement.
- 3. DOC declares that fair and due process under the Administrative Process Act, Title 9, Chapter 1.1:1, Section 9-6.14:1 et seq., has been received.
- 4. This Agreement shall remain in effect until the requirements of the Schedule of Compliance in Appendix A are completed.

 Termination of this Agreement, or of any obligation imposed in this Agreement, shall not operate to relieve DOC from its obligation to comply with any statute, regulation, permit condition, order, other agreement, certification, standard, or requirement otherwise applicable.
- 5. DOC shall not be responsible for failure to comply with any of the terms and conditions of this Agreement if such noncompliance is caused by earthquake, flood, or other act of God, fire, war, strike, or other occurrences resulting in impossibility of compliance and if DOC shows that such occurrences and noncompliance were beyond its control and were not due to a lack of good faith or diligence on the part of DOC. When circumstances are anticipated to occur, or are occurring, or have occurred which may delay compliance with or cause violation

of any requirement of this Agreement, DOC shall notify the Director of the Department, in writing, of the reason(s) for and projected duration of such delay or violation and the measures taken and to be taken by DOC to prevent or minimize such delay or violation and the timetable by which such measures will be implemented. Failure to so notify the Director shall constitute a waiver of any claim of inability to comply with a requirement of this Agreement.

6. This Agreement shall become effective upon execution by both the Director of the Department of Waste Management and the Director of the Department of Corrections.

For the Department of Waste Management
Cynthia V. Bailey, Director

For the Department of Corrections Edward W. Murray, Director

Date:

CRS:111.w5/na

APPENDIX A

SCHEDULE OF COMPLIANCE

VIRGINIA DEPARTMENT OF CORRECTIONS

Buckingham Correctional Center/

Virginia Correctional Enterprises

EPA ID No. VAD982696023

- 1. Except as otherwise specifically authorized under the VHWMR, DOC shall not store hazardous waste at its BCC facility at Dillwyn or at any other facility or on any other property operated, leased, or otherwise controlled by DOC, unless DOC has been granted interim status by the Department, or has applied for and been granted by the Department a hazardous waste management facility permit under VHWMR § 11.2 or an emergency hazardous waste management permit under VHWMR § 11.9.A, for such activity.
- 2. DOC shall release shipments of any hazardous waste generated at its facilities only to a transporter with an EPA Identification Number and a Commonwealth of Virginia transporter permit, and DOC shall offer its hazardous waste only to facilities that have received an EPA Identification Number and that have been granted interim status or a permit to manage offsite hazardous waste, as required under VHWMR §§ 5.5.A.7 and

DRAFT

6.2.C.

- 3. DOC shall comply with the manifest requirements specified in VHWMR Part V, as required under VHWMR § 6.3.
- 4. DOC shall retain copies of all manifests, annual reports, and test results for at least three years, as required under VHWMR § 6.5.A.
- 5. DOC shall comply with all annual reporting requirements specified in VHWMR § 6.5.B.
- 6. DOC shall keep containers closed during storage, and shall clearly mark the words "Hazardous Waste" and the date accumulation begins on all containers as required under VHWMR §§ 6.4.E.1.a, 6.4.E.1.b, 6.4.E.1.c, and 9.8.D.1.
- 7. Within thirty (30) days of the effective date of this Agreement, BCC and VCE shall submit to the Department documentation showing that it has notified the H. W. Bryant, Sr., Landfill (or any other unauthorized landfill that received hazardous waste from BCC) of the approximate dates the unauthorized hazardous waste disposal took place and the amounts and types of hazardous waste disposed at the landfill by BCC and VCE.

DBAFT

- 8. Within thirty (30) days of the effective date of this Agreement, BCC and VCE shall notify the Director of the exact location of any existing accumulation areas at BCC, and BCC and VCE shall notify the Director of the exact location of any accumulation areas subsequently established at BCC at least fifteen (15) days prior to their use, as required under VHWMR § 6.4.E.l.e.
- 9. Within thirty (30) days of the effective date of this Agreement, in accordance with VHWMR § 6.5.C, BCC shall contact the facility that received the shipment of hazardous waste referenced by the hazardous waste manifest #01071, and determine the status of that shipment. Within forty five (45) days of the effective date of this Agreement, BCC shall file an Exception Report with the Director, which report will comply with the requirements of VHWMR § 6.5.C.2.
- 10. Within thirty (30) days of the effective date of this Agreement, BCC and VCE shall record job titles for each position at BCC related to hazardous waste management and the name of the employee filling each job as required under VHWMR §§ 6.4.E.1.d and 9.1.G.4.a. Within forty-five (45) days of the effective date of this Agreement, BCC and VCE shall a develop written job description for each position listed, a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position, and shall

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submit to the Department documentation that the training or job experience has been given to, and completed by, facility personnel as required under the VHWMR §§ 6.4.E, 9.1.G.4.b, 9.1.G.4.c, 9.1.G.4.d, and 9.1.G.2.

- 11. Within sixty (60) days of the effective date of this Agreement, BCC and VCE shall provide the training specified in paragraph 10 and document the same.
- 12. Within sixty (60) days of the effective date of this Agreement, BCC and VCE shall submit to the Department a groundwater monitoring program for the surface impoundments (sludge drying beds) at BCC which meets the requirements of VHWMR § 9.5 modified as necessary to meet the closure performance standards of § 10.6.B. The Department will approve or modify and approve this program in accordance with the VHWMR. BCC and VCE shall implement this program within thirty (30) days of receipt of the Department's written notice of approval.
- 13. Within one hundred twenty (120) days of the effective date of this Agreement, BCC and VCE shall submit to the Department a closure plan for all hazardous waste surface impoundments (sludge drying beds) at BCC. This plan shall meet the requirements of §§ 9.6 and 10.6 and 10.10.I as made applicable by 9.6.L., of the VHWMR. At the same time, contingent closure and contingent post-closure plans, as required under § 10.10.I.3 of the VHWMR, shall

be submitted to the Department. The Department shall approve or modify and approve these plans in accordance with the VHWMR. Within one hundred eighty (180) days of receipt of the Department's written notice of approval of these plans, BCC and VCE shall complete closure of these units in accordance with the approved closure plan. If these units have been closed under VHWMR § 10.10.I.1.a ("clean" closure), BCC and VCE shall provide the Department owner/operator and professional engineer certifications as required under § 10.6.F. If closure under § 9.6.F cannot be achieved, BCC and VCE shall notify the Department of this fact and immediately begin implementation of the approved contingent closure and contingent post-closure plans. Within one hundred eighty (180) days of this notification, BCC and VCE shall submit to the Department a permit application, and required application fees, for groundwater monitoring and any necessary post-closure care in accordance with §§ 10.10.I.2, 10.6.H through 10.6.K, 10.5, 11.1 and 11.2. Following the completion of contingent closure and until such time as a permit is issued, BCC and VCE shall follow the approved contingent post-closure plan referenced above.